



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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TC 1700

In re application of

Confirmation No. 9667

Ingvar SELMER-OLSEN et al.

Docket No. 2001-0136A

Serial No. 09/762,821

Group Art Unit 1761

Filed April 23, 2001

Examiner Carolyn A. Paden

AQUEOUS PRESERVATIVE

RESPONSE

THE COMMISSIONER IS AUTHORIZED  
TO CHARGE ANY DEFICIENCY IN THE  
FEE FOR THIS PAPER TO DEPOSIT  
ACCOUNT NO. 23-0975.

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Responsive to the Office Action of June 6, 2003, Applicants submit the following remarks in support of the patentability of the presently claimed invention over the disclosures of the references relied upon by the Examiner in rejecting the claims. Further and favorable reconsideration is respectfully requested in view of these remarks.

Initially, although the Office Action Summary page indicates that claims 5-13 are pending in the application, please note that the previous Office Action indicates that claims 4-12 are pending, and Applicants' response to the previous Office Action notes that the claims under examination are claims 5-12 set forth in the Preliminary Amendment. It therefore appears that the claims pending in the application are claims 5-12.

The rejection of claims 5, 6, 8 and 10-13 (10-12 ?) under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of Hjornevik et al. in view of Haram is respectfully traversed.

The main object of the present invention was to develop an improved formic acid-containing preservative, which is less corrosive and irritating to the skin than formic acid. Applicants found that this could be achieved by incorporating certain amounts of glycerol into the preservative.

The Hjernevik et al. reference (USP 5,993,875) relates to a method for cooling and preservation of fish, using an aqueous solution of formic acid and/or mono/di or tetra salts of ammonium or alkali and/or alkali earth salts of formic acid as a cooling and preservative mixture. The object of this reference was to develop a new method for treatment of fish to attain a fish raw material which could be stored for an extended period of time while maintaining improved quality. The obtained fish products should be low in NaCl content. Although the reference mentions that acetic acid is corrosive, there is no suggestion that the corrosive nature of formic acid could be lessened by incorporating glycerol into the preservative. Thus, the Hjernevik et al. reference does not address the problem (corrosive nature of formic acid preservatives) confronted by the present inventors.

The Haram reference teaches that glycerol is a cooling liquid for fish, but does not suggest that glycerol may be added as a corrosion inhibitor to prevent skin corrosion.

The Examiner takes the position that since the purpose of Hjernevik et al. is to preserve fish, it would have been obvious to include glycerol in the composition as a partial substitute for the formic acid cooling agent since both of these compounds are known ingredients for use in cooling liquids in fish products.

However, Applicants respectfully submit that there would have been no motivation to combine these references in the manner suggested by the Examiner, because the references do not suggest that any benefit would be achieved by such combination. The problem confronted by the present inventors, i.e. reducing the corrosive and irritating nature of formic acid-containing preservatives to the skin, is not addressed by either Hjernevik et al. or Haram, and there is certainly no suggestion in either of these references that this problem could be solved by adding glycerol to the formic acid-containing preservative of the Hjernevik et al. reference.

Furthermore, even if the references do raise a presumption of obviousness of the present invention, Applicants take the position that such presumption is overcome by the showing of unexpected superior results achieved in accordance with the invention, as established by the

comparative results set forth in the present specification. Particular attention is directed in this regard to Table 1 on page 6 and Figs. 1-2 of the application. From Table 1, it is apparent that the preservative of the present invention [ATF (ammonia tetraformate; page 2, line 5) + 0.5% glycerol and ATF + 1.2% glycerol] is substantially superior to ATF alone (corresponding to the Hjernevik et al. reference) in terms of skin corrosion. There is no suggestion in either of the references that this result could be achieved by incorporating the glycerol of the Haram reference into the preservative composition of Hjernevik et al. Therefore, any presumption of obviousness which may have been raised by the Examiner is considered to have been overcome.

Therefore, in view of the foregoing remarks, it is submitted that each of the grounds of objection and rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

Ingvar SELMER-OLSEN et al.

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